

E



LIBRARY OF CONGRESS.

✓ *Chap. E 384*

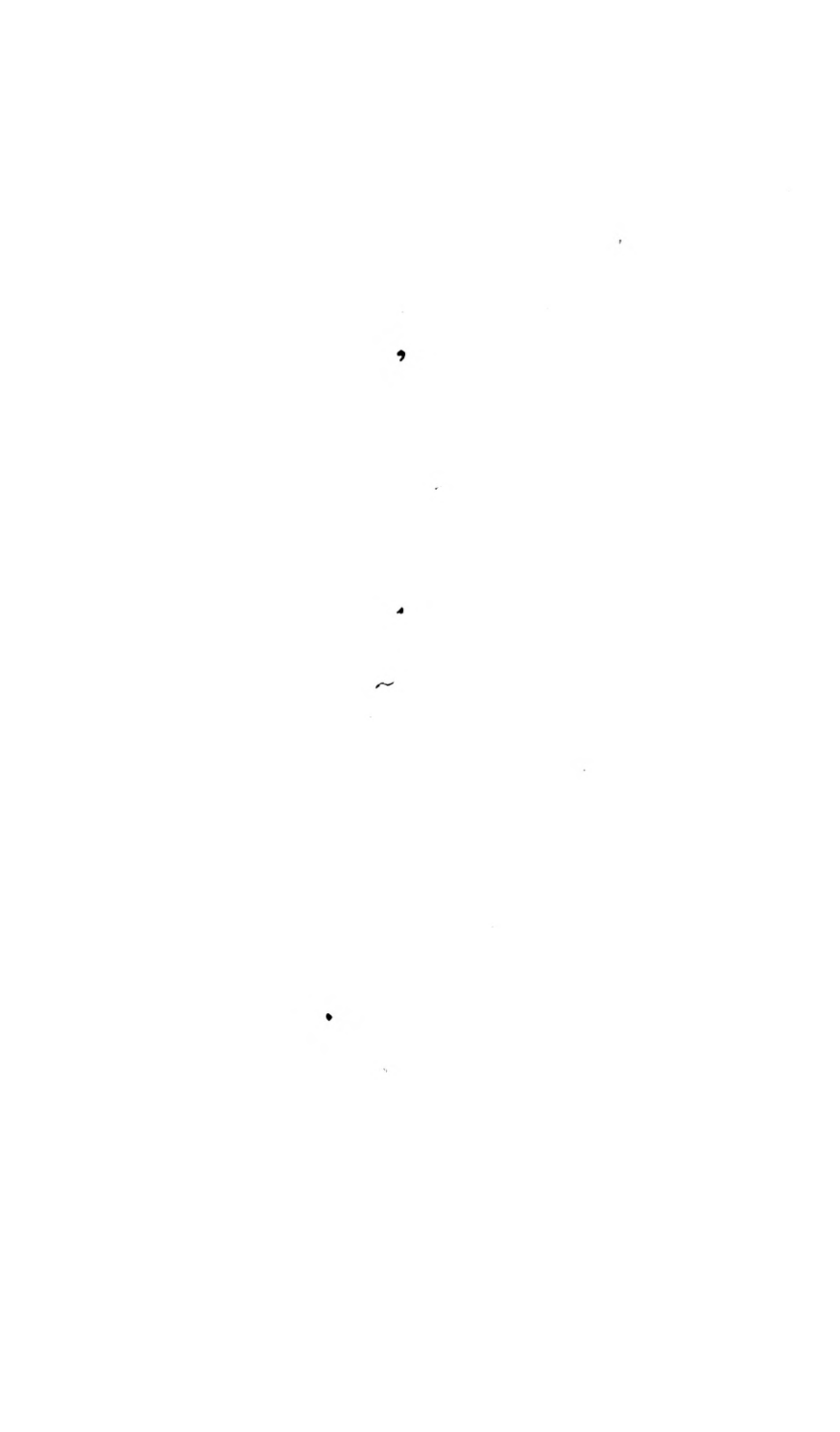
*Shelf 3 584*

UNITED STATES OF AMERICA.









# CONSTITUTIONAL ARGUMENTS

INDICATING THE

**RIGHTS AND POLICY**

OF

**THE SOUTHERN STATES.**

---

BY CHARLES STEVENS.

---



**Charleston:**

PRINTED BY J. S. BURGESS, 44 QUEEN-STREET.

**1832.**

THE following pages contain the *substance*, (modified in form and enlarged in the argument,) of a corresponding series of resolutions, prepared, whilst in attendance as a member of the UNION CONVENTION, lately held in Columbia: with a view, rather to systematize my own thoughts, on the main question of their deliberations, than to submit them to the consideration of that body, or of the public. They attempt to illustrate, by analytic argument, the chief constitutional questions which were supposed to be involved in the proposition for a *Southern Convention*, then under discussion: and comprehend what the writer trusts, will be received as an apology for his own course, if not as a satisfactory elucidation of the doctrines and opinions which he honestly entertains.

The arrangement is that of detached propositions; the whole of which, however, will be found intimately connected, in the relation they bear to the main result.



# CONSTITUTIONAL ARGUMENTS

INDICATING

THE RIGHTS AND POLICY OF

## **THE SOUTHERN STATES.**

---

*Proposition 1st.* It results from the nature of a *federative compact* between equal and independent States, purporting to create a common government of *limited powers*, for defined objects of utility, *common to all the parties*; that the Government thus *created* (whether appointed and controlled by a simple majority of the people, on Republican principles; or however otherwise modified by its Constitution) cannot be the *ultimate judge* of the *extent* of its *own powers*: for this would in effect, render the limitations of its powers, *illusory*; and the character of the government (in reference to the parties creating it) *despotic*: and therefore wholly incapable of affording any *security* for the *reserved unalienated rights* of the several parties to the compact; the secure preservation of which, must in reason be regarded, as the *cardinal intention*, in adopting the confederated form of government.

2. To retain in the *individual members* of such a confederacy of States, power of *subsequent control*, over the acts of their common Government; to which by the terms of their compact, they have fully delegated the high *attributes of Sovereignty*, necessary for maintaining *unity* in their joint relation to foreign nations; and for preserving domestic *harmony* amongst themselves, in reference to each other, and to the confederated body; would be plainly subversive of the intention of such a confederacy: being obvi-

ously inconsistent, with the *uniformity* of its action, and the security of its *existence*. For if a restraining or *negative* power, in *each State* of a numerous confederacy were admitted to be necessary for their individual safety, still it would be more convenient, more prudent, and more *effectual*, to require their *unanimous* concurrence, as a *preliminary* to legislation; than to claim for each State separately, a recognised authority to embarrass the common Government, *at pleasure*, by *partially* arresting the action thereof, within its *own particular limits*; and (to that extent) destroying its existence, as a common Government.—This right of subsequent State control (or Nullification) if it exist at all—to be available, must be one of arbitrary discretion in each individual member: without responsibility: not susceptible, therefore, of any restraint or regulation for the *common good*: and consequently, a right which in its free exercise, could not fail to generate infinite confusion, and to defeat on many occasions, the great purposes for which a common Government was established.

An act of Nullification, either by a single State (or by any minority of the States less than are allowed to possess a control over the Constitution) must on these principles be considered highly irregular and portentous of danger; both to the Union, and the party undertaking to set aside its laws. The case has not been provided for in anticipation: and its results must depend much on the temper of all parties—the reasonableness of the demands on one side, and the disposition to conciliate on the other. If the adverse claims of one party be not voluntarily conceded, or those of both adjusted through a General Convention, it would be most desirable in order to avoid the *distractions of civil conflict*, to consider the act of Nullification, as equivalent *in fact*, tho' not in name, or profession, to a *formal secession* from the compact of Union; since avowed secession, would enable the parties to regulate all proceedings, whether of negotiation:

or hostility, by the received rules of international law. The right of a party to the compact of Union to recede from her engagement to her co-States, and to release her own citizens from their allegiance to the Union consequent to that engagement; is here assumed as incontestable. Yet it could assuredly only be exercised, under a *full responsibility* to the rest of the States; for every equitable claim, upon the seceding party, growing out of previous relations, or justified by a prudent regard to dangers apprehended.

The adjustment of these equitable claims, would be more or less difficult, according to the relative geographical position of the seceding State or Territory: and the necessary interference of interests, depending on this circumstance might be supposed in most cases, to render the existence of a separate *independent Government wholly inadmissible*: or in other words to justify conquest and a forced submission to terms, dictated by the policy of contiguous States, still attached to the Union.

3. The *right of ultimate construction*, over a written compact of divided Sovereignty, between the individual States of a confederacy, on the one hand; and a common Government of limited powers on the other, is *identical* with the power of *altering its terms*; and cannot therefore be safely deposited in any other hands, than those authorised to amend the compact itself; nor even supposed, without manifest incongruity, to be separated from the power of amendment.\*

In cases of disputed pretensions to authority amongst Sovereign bodies so related to each other, the obvious remedy is to make provision, for an *easy reference* of the contested matter, (at the option of either party deeming itself aggrieved by the acts of the other; and at the same time, unwilling to submit an attribute of its high political Sove-

\* See Appendix.

reignty, to an ordinary judicial arbitrament) to *the tribunal competent to amend* the compact: whose *decision*, independent of argument, or regard to technical rules of construction, must necessarily be *final and conclusive*, between them.

Three-fourths the of States of this Union, being alone authorised to amend, or make alterations, in the Federal Constitution (except where the *assent* of a State *individually affected* is also required,) the concurrence of the *same* numerical proportion of the States by their Legislatures or Conventions, ought also to be required in order to determine *affirmatively*, in favor of the Federal Government, doubtful questions, of disputed power, claimed or practically assumed by that Government, as implied in the grants of the Constitution; when contested by one or more of the Sovereign States, as *ungranted*, and therefore assumed *in derogation* from the reserved rights, inherently appertaining to the separate States, or to their citizens. To compel a State, deeming itself aggrieved by the acts of the Federal Government, and appealing to its *co-States* as Federal arbiters, against any supposed aggression of the governing majority—to sustain its complaints by the positive affirmance in its favor, of *three-fourths of them*, is virtually to *sanction* every *usurpation of a majority*, in violation of the fundamental Federal principle of our system; and to deprive a party aggrieved, of all reasonable hope of relief, *in that mode*: since it is evident, that the concurrence of a simple majority of Congress in its views, would have been sufficient to have prevented, or removed the oppression.

On the contrary the Constitutional Compact, with salutary preference for the rights of the several States, always liable to invasion, by a governing majority of the Union; as a *counterpoise* to the otherwise irresistible tyranny of such a majority, if enabled to confer *new powers on themselves* at discretion, has distinctly and unequivocally reserved to any

*minority* of these States, exceeding *one-fourth* of them, the *only* substantial and efficient security, it was possible to provide against such a danger; by retaining in the hands of that minority, an absolute and unqualified *negative for self-defence*, over the acts of any less majority than *three-fourths* of the whole number: thereby guarding cautiously the *federal character* of the system, against the manifest tendency of its practical administration to an absorption of all power to itself; and erecting a permanent *barrier* against the *despotism of a majority* of the whole Union, over the rights justly appertaining to its members.

It is therefore strictly conformable to the analogy of our Constitution, considered in reference to the mode of its adoption, as well as in regard to its provision for future amendments; and it is absolutely necessary for sustaining the admitted relation of the parties to each other, and for giving effect to the original federative principles, which are the true basis of the whole structure; that the *same* stipulated *minority* of the States, possessing an undisputed right, to prevent any enlargement of federal powers, when attempted by the interpolation of express grants into the Constitution; should practically possess an equally efficacious control, for preventing the *usurpation of such powers*, whether by legislative or judicial *construction*, or by any other *evasive means*, inconsistent with their safety. This right of control to be effective, presupposes an *unqualified negative*, in the *Constitutional minority* of the States, on every act of the General Government, (so far at least as leading principles are to be established) which may be considered *by them* to be unwarranted by the Constitution, in its *letter*, or in its *spirit*: since otherwise there is *no power*, however *questionable* or *unequal* in its effects on the interests of the different States, or geographical divisions of the Union, which *may not be permanently assumed* at pleasure, by a governing majority: a species of usurpation against which our system affords

no other adequate check, either in the judiciary or any other regular depository of its ordinary powers.

The judicial department, which to a certain extent may sometimes be able to apply a corrective to abuses authorised or committed by other branches having been expressly *restricted* by its organization to limited classes of cases, in law and equity, excluding the exercise of *direct political power*, is seldom competent to afford relief, or even to entertain on their substantial merits, the real questions on which political controversies usually depend. To whatever respect or binding efficacy its decisions may be entitled, within the legitimate sphere of its action, the rights of *Sovereign States*, can never be conclusively settled, nor their differences terminated, by being introduced into judicial proceedings, as mere *incidents* to subordinate litigation.

It is no valid objection to the admission of a negative for defensive purposes, in a minority of the States over the *il-limitable* pretensions to power, which may be founded *on construction* (precisely equivalent to that which is admitted to exist for the same end, in regard to new powers claimed by grant,) that *real alterations* of the Constitution, might in this manner be introduced by a minority of the States, when called upon as arbiters to interpose, on the complaint of a party objecting, perhaps, to a long received construction thereof. The powers of the Federal Government were not conferred, by the act of a majority of the people of the United States collectively, or even by a mere majority of the States. The distinct *assent of three-fourths* was indispensable to its adoption, even *partially*, amongst the approving States: nor did it become obligatory on any State without its own individual consent. The *continued existence* of the Union therefore, under *any received construction* of its powers, may safely be trusted to the *continued approbation of the same* numerical majority of the States, which, in the vigilance of liberty, characteristic of the days of our im-

mediate fathers, was esteemed necessary, to justify the alienation of a single particle of *separate supremacy*, by any State of the Confederacy. This anomalous operation of our system (if such it must be considered) is wholly *in favor of liberty*: which can only be safe under the guardianship of those interested in its preservation: whereas the indiscreet *extension* of the powers of the Federal Government, whether by grant or by construction, tends directly to bring under the control of a majority of the Union, the *separate and peculiar rights* of its members: in which the majority do not equally participate: and against which they may be supposed to entertain adverse prejudices; if their interests do not directly come into conflict.

4. The *principle of partial protection* to favored branches of domestic Industry, as now incorporated into the Tariff laws of the United States, by repeated acts of Congress; and long sustained by *small majorities* of that body, is peculiarly inapplicable to our Federal system. That Government is confessedly limited by its Constitution to certain *enumerated objects* of legislation, embracing *interests strictly common to all its members*: and in order to effect these *defined purposes only*, it is empowered to lay and collect uniform taxes, duties and imposts. The authority thus assumed by bold construction of a phraseology, perhaps not sufficiently guarded, to levy taxes on our foreign imports, amounting sometimes to prohibition, with a leading view to their operation as *bounties to favored pursuits* of private industry, not required for national defence, or for any other purpose of utility, common to all the States,—is, a *systematic violation* of the principle of *Federal equality* in its taxation: and an utter disregard of the fundamental rule of *equal justice*, in apportioning the contributions, levied by its authority on the *States and sections* of this Union: pro-

ductive moreover of equally capricious unfairness, in its effects on individuals and classes of the same locality.

No *State* or sectional division of this Union which regarded as *a whole*, or as a detached community, is *benefitted* by a particular imposition nominally for the general revenue, can in any proper sense be considered, as *sharing in its burthens*; however unequally the advantages, and a portion of the attendant evils may be distributed amongst its own citizens. On the contrary such a State or geographical section, actually *receives a bounty* from the common treasury, *without an equivalent*; equal to the pecuniary benefit enjoyed by its citizens.

So on the other hand, every duty or impost, levied *for the* encouragement of any domestic production, not required for some purpose of common necessity to the whole Confederacy, is in respect to the States or sectional divisions, *not concerned* in the production of the favored article, a tax of *unmitigated oppression*.

It is idle to expect that any scheme of mutual compensation amongst discordant interests, can possibly result in the production of positive or of relative justice; whilst in fact the governing motive of choice in selecting the objects of such taxation is always to secure special advantages; or at best to palliate its own gross injustice. *Equal protection to all*, to all the interests and industrious pursuits of any community, by a complicated scheme of imposts or other taxes, is a solecism *in terms*; for, if it were practicable, even without any expense, or other inconvenience, it would lead to exactly the same issue as would the *denial of protection to any*. Every *advantage* therefore required by the legislative extension of any interest beyond its *natural proportion* to others; must as a general rule be produced, by the corresponding depression of others less favored, *below* the standard of equal and impartial justice.

The great object proposed by taxes restricting foreign



importation, is to secure to the domestic producer of a rival commodity, a *monopoly* or at least a pecuniary *preference* in the home market. This is accomplished by *compelling an advance* in the proper price of the foreign article, by means of the tax imposed upon it; to the point, at which the same commodity or a substitute for it, can be profitably furnished by the domestic producer. Its effect is not *only* to tax consumption, and lessen its amount, by depriving the public of a cheaper and more abundant supply; but also, to *derange* the established course of commerce, through all its ramifications. It obviously *narrows* the range of advantageous foreign exchanges, otherwise open to the exporter of our *domestic surplus*; and thereby so far lessens the *relative value* of that surplus itself: which in effect, if not in name, reduces the *real worth, of all produce* raised for exportation: since value is truly measured, not by the *nominal price* of an article; but by the *command*, which that price possesses over the subjects, of necessary or desired commercial exchange.

For these inevitable evils of restrictive laws operating on foreign commerce, there are supposed to be some counter-acting or compensating advantages: but the advantages will be found to be chiefly confined to the vicinity in which the manufacturing establishments or other cherished improvements are located: whilst the *mischiefs involved*, are co-extensive with the restriction; or rather, are aggravated by distance from their favored seat.

When both the good and evil are supposed to be *equally diffused* over the whole territory whose trade is thus restricted, the policy of limited protection to useful branches of domestic industry, cautiously pursued, (however dangerous) may not always be unwise or eventually injurious. It may even be admitted to be sometimes beneficial in developing more rapidly than the natural process of things, latent resources for new adventurers; which though adapted

to the condition of a country supposed to be advancing in the career of mechanical and other useful improvements, yet for want of experience and acquired skill, might remain long unattempted, without alluring capital to the dangers of a new enterprise, by the assurance of a market for its productions, and a pledge to sustain its efforts, against the depreciating effects of an increased supply; in markets previously stocked with the same commodity from other quarters.

To this extent it may doubtless, sometimes, be the dictate of a prudent forecast, to assist the difficult struggles for birth, of infantile arts requiring great previous investments to insure success: in a country well prepared for their introduction, and where the chief difficulty to be obviated, is, a disadvantageous contention with the established course of trade. Such a case may perhaps be allowed to constitute an exception to the benign rule of unlimited freedom in all the operations of commerce: and so far, to justify the seeming absurdity of an enlightened people, voluntarily imposing shackles on their own profitable exchanges. The reason of the exception, however, pre-supposes that no community should be required to submit to such restraints and sacrifices of the advantages in its possession, but one willing to endure them, under the expectation of greater eventual gains from the naturalization of new and valuable arts within its own territorial boundaries. It surely cannot be urged in justification of the *forced extension* of the same restrictions (even supposing them wise and salutary to a part) over a vastly extensive territory, divided into separate and only federally allied communities; a great proportion of which is admitted to have a dissimilar and even a directly hostile interest, ruinously affected by the policy, which breaks the chain of reciprocity, uniting them to their chief and most necessary customers.

If the established commerce of *any people* connected by

federal ties with another, perhaps a little more advanced in the arts than themselves, who can in no way, or only by remote relations, be participaters in the advantages expected by the latter from the forced introduction of new branches of art and industry, is to be the sport of every speculating attempt to build up preeociously new and uncertain interests, *foreign* to themselves, and wholly *local* in the advantages they diffuse, as well as in the place of their existence; and if both their trade and their consumption are to be indefinitely taxed *without their consent*, to ensure the success of every imprudent experiment those interests may suggest; it is a state of things which must be admitted to comprise in itself the most mischievous consequences, of *national dependence* or even of *colonial subordination*. It is moreover a form of colonial dependence, likely to become, vastly more oppressive, than the condition of early colonies, depending on a *parent* nation; which already occupies an advanced position in the scale of arts, as compared with other portions of the civilized world. In this latter case, a monopoly of the privilege of supplying a colonial market with the artificial products of a protecting parent nation; may be said only to effect by compulsion, exchanges, which the best interest of parties so situated would have spontaneously dictated. But for a people, who *without legislative assistance* could not profitably have supplied even their *own immediate* domestic market; by the free or pretended construction of a merely federative engagement, limited in its design to matters of strictly mutual concern, *to subject* the commercial energies of other States, politically their equals, and with interests on this subject wholly irreconcilable, to such a condition of subordination as is implied in the adoption of *general protecting laws* for their own exclusive benefit, *without general consent*; is not more humiliating, to the just pride of political equality; than it must in practice prove *baneful* to

the hopes of the injured; and blighting to the sources of their prosperity.

Under such a system, *forced* upon them by combinations of adverse interests, too powerful to be resisted, where *plurality* is the *only criterion of right*; there can be little prospect of safety for the great agricultural interests of the Southern States; which do and always must depend for their value on the greatest possible facility of access, both for exportation, and for importation to the general markets of the world. For these leading interests there can be no greater calamity, than that state of things, in which their foreign exchange is subjected to the arbitrary regulation of others, who either have, or imagine they have, *a direct advantage* in the interdiction of its most profitable return.

5. The lavish *expenditure* by the General Government of the common funds of the Union thus unequally levied on its members; for purposes of *local improvements* not required to effect legitimate objects connected with its particular trusts; or with the common good of all the parties to the compact (however beneficial to particular States or sections,) is totally at variance with its proper functions. Its unavoidable tendency is to introduce a *system of favoritism*, involving relative injustice and indirect oppression; and to generate a spirit of *dependence on its bounty*, *uncongenial* with the true relation of that Government to the States; and not less *corrupting* to its dispensers, than to its receivers.

6. Under a form of Government both *federative* and *popular*, like that of the American Union, blending in its construction these *opposite* principles, to cement together its naturally repulsive materials, into artificial cohesion; a Government which comprehends within its widely extended territory, all the *contrariety of interests* that can proceed

From physical diversity of climate and production; as well as from *contrasts* in the fundamental laws and usages of its members, affecting the *civil condition* of their respective population, and their capacity for different industrious pursuits; the admission of a *rule of unequal taxation*, and expenditure *from favor*, is manifestly, *self-destructive*: leading to the separation of its elementary constituent parts, by the rivalry it creates; and by the intolerable abuses it engenders. The irresistible tendency of such partiality is to invite combinations amongst portions of these conflicting interests in favorable locations for mutual co-operation; sufficiently extensive to *command the majority* of an *elective Congress*: and thereby to render the *common Government* of all the States subservient to purposes of selfishly *local aggrandisement*; and by necessary consequence of corresponding *local oppression*. Combinations like these, must soon destroy the equilibrium of our political elements; whose *mutual strife*, like the well balanced antagonist principles in nature, would otherwise have resulted in the production of *universal harmony*. As long as they remain unchecked, by a recognised *self-defensive power* in the *interests assailed*, the evil manifestly tends, to perpetuate itself. It glosses over its complexion to deceive; and dresses its deformity for popular delusion, through the easy *alliances* it contracts, with the *race of ambitious politicians*: whose hopes of promotion, to patronage and power, are most surely gratified, by the prostitution of eloquence and science, to the service of avarice and monopoly: until the moral perception of the community is in danger of becoming permanently debauched: and the fair claims of social justice, have almost ceased to find a response, even in the bosom of Religion herself.

7. The Southern States of this Union possess in many respects distinct, peculiar, and highly important interests,

common to them and demanding their utmost vigilance. They are moreover in a permanent minority in the Legislative Departments of the General Government, which claims to extend its own powers at discretion, by the mere plurality of votes. In regard to those interests therefore they are altogether defenceless, against the aggressions of an uncontrollable majority in Congress, co-operating together for securing selfish local advantages at the common expense, regardless alike of the limits prescribed to them by the federative character of that Government, and the manifest claims of reciprocal justice. It has therefore become no less the duty than the interest of the Southern States, to demand in earnest, that the theoretic checks of the Constitution, should be rendered operative in practice by a distinct recognition of the fundamental principle of our system, of an absolute privilege for self-defence, in the prescribed minority of the States, over the assumption of oppressive powers, by forced construction from perverted grants: as effectual as the authority of the same minority is admitted to be, against the introduction of such powers into the body of the Constitution by amendment through the agency of the States.

If there be in truth no practical check to the assumption of ungranted power, whilst upheld by the people and States, on whom a majority of the members of Congress depend for their appointments, the provision of the Constitution concerning amendments by the States is wholly superfluous: since every desired power, which it might be presumed the States would reject, if consulted in their primitive character as the creators and arbiters of the compact, may on that supposition, be securely exercised by Congress, under the licence of pretended construction. If this be admitted, the best feature of the system on which the hopes of our fathers perhaps too credulously relied, as adequate to protect the separate parties to the compact in their unalienated rights of Sovereignty, against the violence of

an overwhelming democracy has lost its vital energy: and the crisis imperiously demands our best exertions to effect its resuscitation. The remedial provisions of the Constitution may be defective; and the forms prescribed for enabling a competent minority to restrain usurpation in the mode it was chiefly apprehended, may not be sufficient to restrain it with equal effect in a mode of assault not distinctly provided against. But the essential right itself manifestly exists; on which, as to us at least, the value of the Constitution mainly depends. A constitutional right of self-defence in a stipulated minority against every encroachment, which as far as the Southern States are concerned is their only protecting shield, against ruinous contact with a power hostile by the instinct of self-interest and otherwise irresistible, can never be abandoned without treason to themselves and their posterity; can never be abandoned, until the Constitution itself is abandoned; *as it must be*, whenever the destruction of its federative characteristics can no longer be prevented.

8. A Convention of the Southern States, would properly have for its object an enquiry into facts, connected with their supposed grievances, their causes and their effects, near or remote, affecting or likely to affect the particular interests, and general prosperity of those States. It would examine temperately, the frequent complaints of those States in reference to the Tariff, in its principle and in its true operation, locally and universally; the appropriation of the revenues of the Union to purposes of internal improvement, and the abuses with which it is coupled from necessity or choice; and how far both systems, and their attendant evils, may be regarded as permanent or transient. An agreement in the true state of facts on these points will lead of necessity to the proper inferences whether the Government of the Union, as now conducted, or as it is likely

hereafter to be, is a safe depository of the vital interests of the Southern States which it assumes to regulate at pleasure whether the Constitution in its present form, affords an efficient practical safeguard against dangers justly to be apprehended; or whether it be expedient to demand any change, either in its formal or its substantial provisions. The results of such enquiries might be reported to the different States concurring in the call of a Southern Convention; all of whom would afterwards act separately upon its recommendations.

But *here* the action of the *Southern Convention itself* must terminate: and each State remain free to approve or disapprove the course recommended. In all this there is nothing unconstitutional; or even equivocal; when judged by a fair constitutional standard. It seems moreover desirable, *though not essential*, that the Legislatures of the different Southern States should directly sanction the meeting of such a Convention, either by appointing the members or recommending their appointments by the people in districts: and that the report of the Convention should be addressed to them; since their concurrence is indispensable to the prosecution of any concerted plan of proceeding amongst the States themselves.

Propositions for amending the Constitution of the United States, can only originate with Congress or with the Legislatures of the several States. As it would hardly be reasonable to expect the previous concurrence of two-thirds of all the States in any application it may be proposed to make, for specific amendments of the Constitution, or for the call of a General Convention for review of the whole compact of Union; the *voluntary action of Congress* would be highly *desirable*; and *could not* in decent courtesy *be refused* to the respectful solicitation of so many States, on an occasion so solemn; and for an avowed purpose, not more indicative, of their own *deep convictions*,



*of wrongs* sustained from the hands of their brethren; than of their profound *attachment to the Union itself*, and of their sincere desire to insure its perpetuity, on the terms of the original contract—regarding the equality of the States, and the sacredness of their unalienated Rights, *as its basis*. To Congress therefore, the application of the Southern States for the call of a *Convention of all* the States, or for the submission of specific amendments, to the different States of the Union, must of necessity be addressed: accompanied perhaps with cotemporaneous appeals to the States themselves, urging on them by suitable arguments the propriety of such measures, as may be required on their part by necessary regard to the preservation of the Union. If eventually a more decisive course should be demanded for the attainment of the same end; we should then be justified by every consideration of moral duty, applicable to States or Communities, in *enforcing* the call of a Convention, to reconsider the terms of our compact; or *in releasing ourselves*, by our own act, from a connection with other States, whose attention after laborious efforts, it is found impossible to arrest, on a subject of the deepest moment to our mutual welfare, growing out of our contract with them.

The change in our present Constitution, supposed to be necessary to afford full security to the Southern States; and to the rights of minorities in general; according to the theory of our Federal system, is after all, believed to extend only to *provisions of mere form*; without diminishing its original proportions—or depriving it of any attribute of power.

The *superintending control of the States* in Conventions, on *original Federal principles*, over the government created by them—whenever on extraordinary occasions their interposition in that character, is demanded by a sovereign party, is necessary to prevent a total forgetfulness of their true relations to the system: and it is still more

necessary, in order to avoid a recurrence to *revolutionary* principles on every such occasion, *in absolute self-defence*. A considerable *approach to unanimity* on fundamental principles, ought to exist, to sustain the practical administration, in any course of measures deemed *oppressive*, by a sovereign *party to the Union*: and the *standard of unanimity*, as indicated in the rule for authorizing new powers by amendment, is by no means dangerous, in all the extension of which it is capable, for confining the Government within its proper limits. Such at least seems to be the *healing remedy* best adapted to *all the diseases* incident to our political system: a remedy altogether *congenial* to its nature; having been the *medicament*, or rather the *aliment*, of its infancy. The impediments to the easy call of Conventions, for review, was doubtless designed to give to the *experimental* Constitution, under which we live, a *fair trial*; and to allow time for developing its true operation. To this *precaution* it is hoped the *Union itself* will not *fall a sacrifice*; and the admirable labors of our fathers *perish*, for want of wisdom enough in their descendants, to adapt them to their *present circumstances*.

*Pineville, S. C. September 1832.*

## APPENDIX.

---

### *Note to 1st Paragraph of Proposition 3.*

---

This exposition of the theory of our compound system of Government will be found to afford, the only consistent solution of all the difficulties which have grown out of the discussions concerning the claims of the States, and of the Union, respectively, to full Sovereignty. On the subject of State Sovereignty in particular, great confusion of ideas has been introduced: and most mischievously erroneous doctrines advanced, under the sanction of names, to whom I should assuredly yield the highest deference, if personal influence could be permitted to lead in opposition to the full convictions of the understanding.

Nothing can be more inconclusive than most of the arguments relied upon for this purpose. Some fix their attention exclusively on the existence of federative characteristics, as the ground work of our system,—and from thence apply to the relations of the States all the incidents, that appertain to independent nations, bound to each other only by Treaties, of which each is necessarily the only arbiter for itself. They forget in this view, that our Federal organization, contains a large infusion of popular principles—from which with equal plausibility, directly opposite inferences have been drawn.

In the same manner, the conceded fact that the States formed the compact of Union, as equal and independent Sovereigns, is constantly relied upon to prove that they must necessarily have retained perfect individual Sovereignty: whereas it is evident they could have proceeded in no other manner, if it had been their intention, to alienate the whole or any part of their pre-existing Sovereign powers.—If an ordinary league and covenant between independent States had been then contemplated, it is evident that the existing State Governments, might have ratified it, without the aid of special Conventions of the people. But because, the form of Federal Government established, *did* alienate the essential powers of Sovereignty appertaining to the several States; it was necessary to obtain the ratification of the people themselves, in every State, in order to give it a binding efficacy. Hence although the present Federal Government originated with the State Governments entirely—the final decision or adoption, was necessarily transferred to those whose competency could not be brought into question, even though it had extended to the utter annihilation of State power—and the substitution of an entire new system.

The character of our Government must therefore be judged of by the provisions of the Federal Compact itself, and not by extrinsic or historical evidence, except as collateral argument. Examined by this test we shall find, that the ultimate Sovereign power has been transferred, not to the Federal administration, but to the States themselves, requiring for its exercise *the concurrence of three-fourths of them*, who under the provision concerning amendments, possess an unlimited right (except in a single specified instance) to new model the whole fabric at pleasure, by enlarging or abridging the powers, both of the Union and of the States, with Sovereign discretion: and *a fortiori* to expound the existing rights of either of them, in cases of irreconcilable differences between them.

Judge Harper, has with sufficient distinctness defined Sovereign power, to be the ultimate controlling power known to any Constitution or form of Government, according to its own proper theory.

A right to amend the Constitution of the United States so as to be obligatory on all the individual States, is, by Judge Harper's definition, an act of supremacy wholly irreconcilable, with the claim of final Sovereignty as subsisting in the States; and no less *fatal* to the pretensions he advances in *their behalf*, than to those of the Federal Government itself. If there were no common arbiter to whose decision, the Governments both of the Union and the States were obliged to conform, our system would indeed present the anomaly of an *imperium in imperio*, which the consent of ages has pronounced impracticable and absurd.

Whilst I agree perfectly with those who contend that the State authorities are in no degree *subordinate* to the administration of the General Government; I consider it equally plain that the functionaries of the General Government, acting under the Constitution, with a State, are equally independent of the authorities of the State: and cannot be displaced or compelled to abandon their duties without violence, or force—that is without a *Revolution*.

All the parts composing together a system of Government, however complicated in structure, must eventually be under the control of some single common head or Sovereign: for Sovereignty, as Judge Harper justly observes, is a *unity*; incapable of subdivision. The actual distribution of administrative powers, amongst the several functionaries, required in a complex scheme, is of less importance than a regard to the principle of their *equal subordination to a common superior*, capable of *preventing* conflicts on questions of *right*; which may and must arise, amongst authorities mutually *independent* of each other; and therefore the more liable to dangerous collision. The active administrations of the States and of the General Government, are in our system wholly distinct, both in the sphere of their proper operation, and in the responsibility by which they are held separately accountable, to the *different constituent* bodies, on whom they respectively depend, for their appointments to office.

But it is manifest that a divided responsibility like this, can have no tendency to produce *harmony* in their movements, whilst opposite impulses may be communicated to them by their respective constituents: such as must necessarily occur, whenever the people of a *State*, are in opposition to the *prevailing* policy of the Union. Some *acknowledged supreme power*, capable of controlling all the governments of which our system is composed, supplying the place of a common Sovereign, in *the last resort*, was therefore necessary to its perfection in theory; and this important requisite has happily not been overlooked in the actual scheme of our Constitution. *Supreme authority*, which in the hands of any active administration however constituted, is synonymous with *despotism*, in some of its various forms; has, with a due regard to the security of the States, and in perfect consistency with the *modified federative* character of their United Government, been deposited not in any one, or even in *all the branches* of the ordinary *Federal* authorities: nor yet, in the States themselves, as *individual parties* to the Compact of Union: but in the *States collectively*, when called upon to exercise, the organic, or amending power. To this body, as an occasional council of safety, the individual States, originally separate Sovereigns, have consented to transfer an almost *absolute supremacy*, over the articles of union: that necessarily has *superseded* their *individual* sovereignty; whilst it secures the safety and just rights of each, by the pledge of a perfect *mutuality* of interest. Since therefore the *sovereignty of the Union*, has been lodged in a council of the States, to be exercised by the concurrence of *three-fourths* of them; it cannot, according to Judge Harper's just definition of Sovereignty, be pretended to exist *also* in the individual States; over *each* of whom independently of its own particular *consent*, that council, constitutionally possesses, an almost unlimited authority: extending to an enlargement or diminution of their reserved rights at pleasure; and even to the modification of the whole form and structure, of their respective local Governments.

This view of the subject, appears to me *fatal* to all pretensions to *Sovereignty* in the individual States, in the proper technical sense of that term: and of course to the claims, founded on its presumed existence; of a right to declare *as a sovereign*, any act of Congress *unconstitutional*; or to require the functionaries of the United Government, to abstain from the discharge of their appropriate duties.

The ordinary Federal Government being wholly derivative from the States, can of course have no pretensions to ultimate sovereignty as above defined: yet the powers it fairly exercises, as the active organ, of *their collective* sovereignty, includes some of the highest attributes incident to a sovereign, certainly *not less important* than those retained by the separate States: to whom it stands in the relation of a co-ordinate and not of a dependent authority. The infusion of a large proportion of the popular or democratic element into the composition of this Government, has created a direct responsibility to constituents, possessing a relative weight and influence, destructive of the Federative equality of the States by whom it was organized. It is therefore properly subjected to a higher eventual responsibility, to the *States collectively*, as its creators, and sovereign arbiters amongst whom in that capacity, *unanimity* of assent, the essential principle of a *mere confederation of equal parties*, to a compact, has been, by the fundamental compact itself, so far modified, that the negative or restraining control, which would otherwise have appertained to each State individually, can now only be exercised by the concurrence of one-fourth of them. *No responsibility* of the General Government to a *single State*, or any subjection to its mandate or prohibition, *as a sovereign*, can be made to *consist* with their existing relations to each other. To advance this claim, and enforce it, is palpably to discard all the obligations of the Compact of Union; or in other words, it is to assume the attitude of revolution; whether that intention be acknowledged or not. It is to resist forcibly the only organ of administration, by which the States collectively whose supremacy we acknowledge, *ever can act*: and that, under the *pretence of a right*, which it admitted, must render the pacific interposition of the States, unavailing, without the subsequent sanction of the State authorities: for the *right to nullify*, which is claimed as an inseparable attribute of State power, *will still survive*, to defeat *at will* the obligation of conforming to any decision, of the controverted question.

The right to nullify, if it exists, is manifestly susceptible of no limitations. In that respect at least, it is analogous to the right of Revolution; and though their identity is still vehemently disclaimed—the same resemblance can be distinctly traced in all its features. The moment it is asserted, the laws and even the Constitution of the United States, though declared to be *supreme* must yield precedence to every act of the Legislature, with which they come into conflict. The intervention of a *State Convention*, is relied upon, to give this assumed precedence to the State laws. But it is forgotten that the acts of a State Convention itself in opposition to the Constitution or Constitutional laws of the Union, are of no more validity than an act of the ordinary Legislature. Both are simply *void*, in any and every Court, high or low: until our Judges, and Jurors, are *absolved* (*not by an officious construction* of the obligation of their oaths, but by *open declaration* of a competent authority) from the duty of obedience to the paramount law, which has unequivocally pronounced them *void*.

The little quirks and quibbles, by which Nullification is professedly supported, can never be *sustained* in any upright Court; so as to justify an infliction of the *penalties*, which we are officially given to understand, constitutes its *whole armory* both for offence and defence. If we mean to *abandon* the Federal Union, *even for a short period*, under a hope of eventually recovering our place; and at the same time of securing our assailed rights; we must *do it boldly*, and without disguise. It is utterly unworthy of our en-

lightened age, and free nation, to aim at accomplishing a great political revolution, by *artifice* and *cunning*, whilst the simple annunciation of our intention, would probably be effectual. If the Union be necessary to us, or at least highly expedient, as I believe it is; we must be content to exercise patience, under the wrongs it may occasionally inflict, whilst there remains a reasonable hope of their correction, by Constitutional means. But should an emergency arise, which requires of us the peremptory *interdiction*, of purposed *tyranny* on the part of our sister States, our own free associates in danger and in prosperity; we *must not*—*cannot* shrink from the responsibility. We must not seek to avoid a possible conflict with those, whose tyranny we denounce, by sheltering ourselves from danger under a cover of legal subtilities, utterly unworthy of the occasion: and at the same moment prepared to *tyrannize* over our own best citizens by subjecting them to *penalties* for the honest and fearless discharge of duties, enjoined by obligations, from which we refuse ourselves to release them.

The only plausible reasons which can be assigned for claiming, or even for wishing to possess an authority so destructive to all hopes of harmony, in the regular action of our complex system of Government, by those of its advocates who are sincerely desirous of still preserving a shadow of the Union. (and I doubt not the sincerity of their professions on this subject,) are founded in the difficulty of procuring access to a *Sovereign Convention* of the States (*not of the Sovereign States*) by a minority, who may often *justly* consider the Federal Government, a trespasser on their rights. That the difficulty alleged, really exists, and that the flagrant abuses, it is used to sanction, are a justifiable cause of the prevailing discontent, is readily admitted. It is moreover a settled conviction of my mind that a small minority of the States (perhaps a single State) might safely be authorized to demand a reference of every doubtful question, in which its separate rights or those of its citizens were involved, to the same sovereign tribunal. Our Constitution on this point is manifestly defective; and decisive measures ought to be taken in concert by all the States, having a common interest with ourselves to check the progressive usurpations of a popular majority, under the broad license of arbitrary construction; which if much longer sanctioned, will place all the reserved rights of the States in subjection to their tyrannical will. But ought not a Convention of the States, to review the compact in regard to this and all other defective provisions, to be *previously* requested; and even demanded, as a *voluntary concession*, necessary for the preservation of harmony, before any step is taken in disregard of our fair engagements to the Union? And in the last resort, when duly fortified with the approbation and concurrence of our friends and neighbors, and thereby enabled under Providence, to *control our own future destiny*, might we not *suspend for a time* our political connection with the Union; encountering resolutely whatever hazards it might be supposed to involve; without incurring the *greater danger*, and I fear the self-contempt, attendant upon a course of proceeding, equally rash and disingenuous.













LIBRARY OF CONGRESS



0 011 896 327 1